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PTO/98/30 (02-2003) OMB 0651-0031

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**Request  
For  
Continued Examination (RCE)  
Transmittal**Address to:  
Commissioner for Patents  
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P.O. Box 1450  
Alexandria, VA 22313-1450

Application Number	09/905,338
Filing Date	July 13, 2001
Examiner Name	Stucker
First Named Inventor	Watkins, Michael I.
Art Unit	1648
Attorney Docket Number	02558B-059411US

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114**

- a. ☐ Previously submitted
- i. ☐ Consider the amendment(s)/reply under 37 CFR 1.116 previously filed on \_\_\_\_  
(Any unentered amendment(s) referred to above will be entered).
- ii. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on \_\_\_\_
- iii. ☐ Other \_\_\_\_
- b. ☒ Enclosed
- i. ☐ Amendment/Reply
- ii. ☐ Affidavit(s)/ Declaration(s)
- iii. ☒ Information Disclosure Statement (IDS) and 1 cited patent
- iv. ☒ Other Request for Continued Examination; and postcard

2. **Miscellaneous**

- a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of \_\_\_\_ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)
- b. ☐ Other \_\_\_\_

3. **Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

- a. ☒ The Director is hereby authorized to charge the following fees, or credit any overpayments, to Deposit Account No. 20-1430
- i. ☒ RCE fee required under 37 CFR 1.17(e)
- ii. ☐ Extension of time fee (37 CFR 1.136 and 1.17)
- iii. ☐ Other \_\_\_\_
- b. ☐ Check in the amount of \$ \_\_\_\_ enclosed
- c. ☐ Payment by credit card (Form PTO-2038 enclosed)

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**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED**

Name (Print /Type)	Joel G. Ackerman	Registration No. (Attorney/Agent)	24,307
Signature		Date	April 18, 2003

**CERTIFICATE OF MAILING OR TRANSMISSION**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner For Patents, Mail Stop RCE, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Name (Print /Type)	Lois M. Simon	Date	April 18, 2003
Signature			

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Mail Stop RCE, P.O. Box 1450, Alexandria, VA 22313-1450.

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Attorney Docket No.: 02558B-059411US  
Client Reference No.: BRP00001 2003  
(divisional)  
TECH CENTER 1600/2900

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Michael I. Watkins and  
Richard B. Edwards

Application No.: 09/905,338

Filed: July 13, 2001

For: MULTIPLEX FLOW ASSAYS  
PREFERABLY WITH MAGNETIC  
PARTICLES AS SOLID PHASE

Examiner: Stucker, Jeffrey J.

Art Unit: 1648

REQUEST FOR CONTINUED  
EXAMINATION

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

Applicants hereby request continued examination of this Application on the basis of the comments herein and the attached materials.

Submitted herewith is a Supplemental Information Disclosure Statement submitting a reference for the Examiner's consideration. For the reasons stated herein, Applicants do not believe that this reference affects the patentability of the claims that have been allowed; however Applicants wish it to be considered for completeness.

The reference is Walt et al., U.S. patent 6,023,540.

The claims that had been allowed in this application are claims 21-29 and 50-58.

Claim 21 is the only independent claim in this group; it reads as follows:

21. A composition comprising a plurality of solid-phase assay reagents selectively active in a plurality of assays each for a different analyte, each said solid-phase assay reagent comprising a binding species that is selectively active in a single assay and coupled to one of a plurality of microparticles of magnetically responsive material, the sizes of said microparticles varying in size over a range that is an aggregate of a plurality of subranges, each subrange distinguishable from other subranges of said aggregate by flow cytometry and by the

binding species coupled thereto, said microparticles being suitable for use in a multiplex assay procedure that includes the use of flow cytometry.

U.S. patent 6,023,540 (Walt et al.) issued February 8, 2000 on an application filed March 14, 1997, which date is prior to the filing date of the priority application hereof (SN 08/972,563 filed November 18, 1997). It therefore is a reference under 35 U.S.C. 102(e) for what it discloses, and to the extent that such disclosure is relevant to the invention claimed herein.

This patent discloses a process using microspheres carrying a multiplicity of different chemical functionalities, in which the microspheres are coupled to discrete fibers in a bundle of optical fibers, where the bundle acts as a sensor (see col. 3). The beads are located on selected single fibers or on groups of fibers for monitoring of changes in each subgroup of beads (col. 3 line 64 et seq.). Changes in optical response of the microspheres are observed, and are used to identify the corresponding functionality. The microspheres are typically conventional beads made from plastic or ceramic; however, indirect mention of the possibility of a paramagnetic component is at col. 5 line 36.

Nevertheless, this reference is not considered to affect the already indicated allowability of the claims inasmuch as the microspheres, being coupled to fibers in an optical fiber system, are not disclosed as being suitable for use in a flow cytometry process.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned.

Respectfully submitted,

Joel G. Ackerman  
Reg. No. 24,307

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, 8<sup>th</sup> Floor  
San Francisco, California 94111-3834  
Tel: (415) 576-0200  
Fax: (415) 576-0300  
JA:ja

SF 1452585 v1